

STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE  
THREE EMPIRE STATE PLAZA, ALBANY, NY 12223-1350

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FEDERAL COMMUNICATIONS COMMISSION  
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LAWRENCE G. MALONE  
General Counsel

JOHN C. CRARY  
Secretary

September 18, 1998

Hon. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Room 222  
Washington, D.C. 20554

Re: In the Matter of GTE Telephone Operating Companies;  
GTOC Tariff FCC No. 1; GTOC Transmittal No. 1148 -  
CC Docket No. 98-79

Dear Secretary Salas:

The New York State Department of Public Service (NYDPS) submits this letter, in lieu of Comments on Direct Case, in the above-captioned proceeding. GTE's Transmittal No. 1148 establishes a new offering, GTE Asymmetrical Digital Subscriber Line (ADSL) Service, which enables end users to obtain high speed Internet access. Specifically, GTE contends that an interstate tariff is appropriate because Internet traffic is primarily interstate in nature.

This tariff offering raises a host of issues regarding access to Internet-based services, which we have just begun to analyze. Far more dialogue and debate is required before a final

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determination on the jurisdictional nature of such traffic is made.<sup>1</sup> Our interest in these issues is grounded in the concern that telecommunications networks continue to interconnect efficiently for the exchange of traffic and that bottleneck facilities, such as the local loops, continue to be available at just and reasonable rates. Regulation of the Internet is not at issue.

We recently completed a proceeding on the reciprocal compensation scheme between carriers who transport calls from end users to Internet Services Providers (ISPs). The New York Public Service Commission determined that

"[a] call to an ISP is no different from a call to any other large volume customer, such as a local bank or a radio call-in program. These calls are all local calls and are billed at local rates. They are also treated as local calls for ARMIS Reporting and Separations. The fact that the call may sometimes be handed off and routed within the ISP's computer network(s) or through the Internet backbone does not alter the jurisdictional nature of the call from the end user to the ISP. Indeed, many intrastate communications ultimately connect to other networks."<sup>2</sup>

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<sup>1</sup> In the event that the Commission determines this specific ADSL offering should be tariffed as an interstate offering, it should also make clear that it is in no way prejudging other ADSL applications or configurations, such as telecommuting or telephony.

<sup>2</sup> Case 97-C-1275 - Proceeding on Motion of the Commission to Investigate Reciprocal Compensation Related to Internet Traffic, Order Closing Proceeding (Issued March 19, 1998).

Thus, the Commission determined that calls to local telephone numbers of Internet Service Providers are intrastate telecommunications.

In the instant situation, GTE is using its own network to deliver the end user's communication to the ISP, rather than handing those calls off to another provider who completes the call to the ISP. The jurisdictional nature of a call does not change if the call is being transmitted by one carrier rather than two. Nor does GTE's use of a high speed private line in this instance, rather than the public switched network, necessarily change the jurisdictional analysis.<sup>1</sup>

Finally, the Telecommunications Act of 1934, as amended by the Telecommunications Act of 1996 (the Act), prohibits the Commission from regulating matters "for or in connection with


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<sup>1</sup> Claims that GTE's ADSL service warrants federal regulation because ADSL's interstate traffic vastly exceeds the 10% threshold set for interstate regulation of analogous special access service (GTE at 19) are misplaced. The Commission's decision to adopt the 10% rule followed a Joint Board recommendation, which did not recommend direct interstate assignment of the cost of all mixed use, special access lines because the Joint Board concluded that such a method would undermine state regulatory authority. MTS and WATS Market Structure, Decision and Order, 4 FCC Rcd 5660, 5665 (1989). Here, the scope and nature of Internet traffic could be used to complete intrastate voice and data communication and, therefore, similar, careful analysis is appropriate.

Letter of New York Department of Public Service  
CC Docket No. 98-79, GTOC Transmittal No. 1148

intrastate communications" (47 U.S.C. 152(b)). Therefore, to the extent that GTE is using a high speed technology service to enable an end user to reach an ISP within a state, the Commission should make clear that GTE or any other carrier, must make such offers under an intrastate tariff.<sup>1</sup>

Sincerely,

  
Lawrence G. Malone  
General Counsel

cc: Attached Service List

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<sup>1</sup> Moreover, should the Commission determine that the traffic terminates on the Internet and not at the ISP's point of presence, it is likely that the Internet will be used to complete intrastate voice and data calls. Under these circumstances, Section 152(b) of the Act serves as a ban on Commission regulation.

James Lanni  
Rhode Island Division  
of Public Utilities  
100 Orange Street  
Providence RI 02903

Joel B. Shifman  
Maine Public Utility Commission  
State House Station 18  
Augusta ME 04865

Charles F. Larken  
Vermont Department of  
Public Service  
120 State Street  
Montpelier VT 05602

Rita Barmen  
Vermont Public Service Board  
89 Main Street  
Montpelier VT 05602

Keikki Laesment  
New Jersey Board of  
Public Utilities  
2 Gateway Center  
Newark NJ 07102

Veronica A. Smith  
Deputy Chief Counsel  
Pennsylvania Public Utility  
Commission  
P.O. Box 3265  
Harrisburg PA 17105-3265

Mary J. Sisak  
District of Columbia  
Public Service Commission  
Suite 800  
450 Fifth Street  
Washington DC 20001

Telecommunications Report  
1333 H Street, N.W. - 11th Floor  
West Tower  
Washington DC 20005

International Transcription  
Services, Inc.  
1231 20th Street  
Washington DC 20036

Brad Ramsay  
NARUC  
Interstate Commerce  
Commission Bldg., Room 1102  
12th & Constitution St., NW  
Washington DC 20044

Magalie Roman Salas  
Secretary  
Room 222  
Federal Communications Commission  
1919 M Street, NW  
Washington DC 20554

Kathryn C. Brown, Chief  
Common Carrier Bureau  
Federal Communications Commission  
1919 M Street, NW  
Washington DC 20554

Camille Stonehill  
State Telephone Regulation  
Report  
1101 King Street  
Suite 444  
Alexandria VA 22314

Alabama Public Service  
Commission  
P.O. Box 304260  
Montgomery AL 36130-4260

Archie R. Hickerson  
Tennessee Public Service  
Commission  
460 James Robertson Pky.  
Nashville TN 37219

Sandy Ibaugh  
Indiana Utility  
Regulatory Commission  
901 State Office Bldg.  
Indianapolis IN 46204

Ronald Choura  
Michigan Public  
Service Commission  
6545 Mercantile Way  
Lansing MI 48910

Mary Street  
Iowa Utilities Board  
Lucas Building  
5th Floor  
Des Moines IA 50316

Gary Evenson  
Wisconsin Public  
Service Commission  
P.O. Box 7854  
Madison WI 53707

Gordon L. Persinger  
Missouri Public Service  
Commission  
P.O. Box 360  
Jefferson City MO 65102

Sam Loudenslager  
Arkansas Public Service  
Commission  
1200 Center Street  
P.O. Box C-400  
Little Rock AR 72203

Maribeth D. Swapp  
Deputy General Counsel  
Oklahoma Corp. Commission  
400 Jim Thorpe Building  
Oklahoma City OK 73105

Marsha H. Smith  
Idaho Public Utilities  
Commission  
Statehouse  
Boise ID 83720

Edward Morrison  
Oregon Public Utilities  
Commission  
Labor and Industries Bldg.  
Room 330  
Salem OR 97310

Mary Adu  
Public Utilities Commission of the  
State of California  
505 Van Ness Avenue  
San Francisco CA 94102

Rob Vandiver  
General Counsel  
Florida Public Service  
Commission  
2540 Shumard Oak Blvd.  
Tallahassee FL 32399-0850

Glenn Blackmon  
Washington UTC  
1300 S. Evergreen Park Dr., S.W.  
P.O. Box 47250  
Olympia WA 98504-7250

Federal Communications Commission  
Competitive Pricing Division  
Common Carrier Bureau  
Room 518  
1919 M Street, NW  
Washington, DC 20551

Myra Karagianes  
General Counsel  
Illinois Commerce Commission  
State of Illinois Building  
160 No. LaSalle - Suite C-800  
Chicago IL 60601-3104

Margie Hendrickson  
Assistant Attorney General  
Manager, Public Utilities Division  
121 7th Place East, Suite 350  
St. Paul MN 55101

Robin McHugh  
Montana PSC  
1701 Prospect Avenue  
P.O. Box 202601  
Helena MT 59620-2601

Cynthia Norwood  
Virginia State Corp. Commission  
P.O. Box 1197  
Richmond VA 23201

Deonne Brunning  
Nebraska PSC  
1200 N. Street  
Lincoln NE 68508

Wanda Harris  
Common Carrier Bureau  
1919 M Street, N.W.  
Room 518  
Washington DC 20554

Diane Munns  
Iowa Utilities Board  
Lucas State Office Building  
Des Moines, IA 50319

Chairman  
Maryland Public Service Commission  
6 St. Paul Street  
16th Floor  
Baltimore, MD 21202-6806

The Hon. Michael K. Powell  
Commissioner  
Federal Communications Commission  
1919 M Street, NW, Rm 844  
Washington, D.C. 20554

The Hon. Gloria Tristani  
Commissioner  
Federal Communications Commission  
1919 M Street, NW  
Washington, D.C. 20554

The Hon. William E. Kennard  
Commissioner  
Federal Communications Commission  
1919 M Street, NW, Rm. 814  
Washington, D.C. 20554

The Hon. Susan Ness  
Commissioner  
Federal Communications Commission  
1919 M Street, NW, Rm. 832  
Washington, D.C. 20554



The Hon. Harold Furchgott-Roth  
Commissioner  
Federal Communications Commission  
1919 M Street, NW, Rm. 832  
Washington, D.C. 20554

Bill Allen  
Bell Atlantic Telephone Corp.  
158 State Street  
Albany, New York 12207

Mary Liz Hepburn  
Bell Atlantic Telephone Corp.  
1300 I Street, N.W.  
Washington, D.C. 20005

John F. Raposa  
GTE Service Corporation  
600 Hidden Ridge  
HQE03J27  
Irving, Texas 75038

M. Robert Sutherland  
Bell South Telecommunications,  
Inc.  
1155 Peachtree Street, N.E.  
Atlanta, Georgia 30309-3618

Durward D. Dupre  
Pacific Bell Telephone Company  
One Bell Plaza, Suite 3703  
Dallas, Texas 75202